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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1962 ³

No. [REDACTED] 51

DUPUY H. ANDERSON, ET AL., APPELLANTS,

vs.

WADE O. MARTIN, JR.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF LOUISIANA

FILED DECEMBER 21, 1962
PROBABLE JURISDICTION NOTED FEBRUARY 12, 1963

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1962

No. 684

DUPUY H. ANDERSON, ET AL., APPELLANTS,

vs.

WADE O. MARTIN, JR.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF LOUISIANA

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RECORD PRESS, PRINTERS, NEW YORK, N. Y., APRIL 11, 1963

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**IN UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA
BATON ROUGE DIVISION**

Civil Action No. 2623

DUPUY H. ANDERSON and ACIE J. BELTON, Complainants,

vs.

WADE O. MARTIN, JR., Defendant.

COMPLAINT—Filed June 8, 1962

To the Honorable, the Judges of the United States District Court, in and for the Eastern District of Louisiana, Baton Rouge Division:

The joint complaint of Dupuy H. Anderson and Acie J. Belton (hereinafter referred to as "Complainants"), with respect represents:

I

Jurisdiction

a) The jurisdiction of this Court is invoked pursuant to Title 28, United States Code, Section 1331, as this action arises under the Constitution and laws of the United States, to-wit: The First Amendment and Section 1 of the Fourteenth Amendment to the Constitution of the United States, and Title 42, United States Code, Section 1981, and the matter in controversy exceeds, exclusive of interest and costs, the sum or value of Ten Thousand and no/100 (\$10,000.00) Dollars.

b) The jurisdiction of this Court is also invoked pursuant to Title 28, United States Code, Section 1343(3) in that: This action is authorized by Title 42, United States Code, Section 1983, to be commenced by any citizen of the United States or other person within the jurisdiction

thereof to redress the deprivation under color of state law, statute, ordinance, regulation, custom or usage of any right, privilege or immunity secured by the Fourteenth Amendment and the Fifteenth Amendments to the Constitution of the United States and secured by Title 42, United States [fol. 2] Code, Sections 1971a and 1981, providing that all citizens of the United States shall be entitled and allowed to vote without distinction of race and for the equal rights of citizens and of all persons within the jurisdiction of the United States.

II

Injunctive Relief

a) The jurisdiction of this Court is also invoked pursuant to Title 28, United States Code, Section 2281, this being an action for an Interlocutory and Permanent Injunction, restraining upon the grounds of unconstitutionality the enforcement of Act Number 538 of the 1960 Regular Session of Louisiana Legislature, of which, a duly certified photostat copy is hereto appended, filed herewith and, by reference thereto, made a part hereof the same as if herein written "in extenso."

b) Complainants allege and aver that said Act Number 538 of the 1960 Regular Session of Louisiana Legislature is unconstitutional, null, void, invalid and without legal force and effect, on its face, and in its entirety, for the following reasons, to-wit:

- 1) That said Act contravenes and violates freedom of speech guaranteed by the First Amendment to the Constitution of the United States and by Article 1, Section 3, of the Constitution of the State of Louisiana of 1921, in that, said Act under its terms and provisions makes it mandatory that your complainants disclose their racial identity, specifically, as a Negro, in order to qualify as a candidate for public office in the election to be held in the Parish of East Baton Rouge, State of Louisiana on Saturday, July 28, 1962.
- 2) That said Act contravenes and violates the due process and equal protection clauses of the Fourteenth

Amendment to the Constitution of the United States and Title 42, United States Code, Sections 1981 and 1983, in that your complainants under the provisions of said Act will be, on said election day, denied basic rights and privileges and deprived of equal protection of the laws which citizens, particularly, candidates of other racial identities bidding for the same public offices, School Board Members of East Baton Rouge Parish School Board from Wards One and Two of said Parish (four (4) year term), will be privileged to enjoy and exercise.

- 3) The enforcement of said Act will result in many unreasonable limitations and many unnecessary restrictions the lack of which are impractical and are not customary of candidates seeking election to public offices, nor of their friends and supporters, all as will be shown on the trial of this cause.

[fol. 3]

III

Temporary Restraining Order

This is an action for a Temporary Restraining Order, authorized by Rule 65 of the Federal Rules of Civil Procedure. That immediate and irreparable injury, loss or damage will result to applicants and/or complainants before notice can be served and a hearing had thereon.

IV

Particular Averments

a) Complainant, Dupuy H. Anderson, is a citizen of the United States of America and a citizen and resident of lawful age of the Parish of East Baton Rouge, State of Louisiana, and is a duly qualified candidate for the Democratic Nomination to the office of School Board Member of East Baton Rouge Parish School Board, State of Louisiana, for the four (4) year term from Ward One (1) of East Baton Rouge Parish, State of Louisiana, in the Democratic Primary Election to be held in the Parish of East Baton Rouge, State of Louisiana, on Saturday, July 28, 1962; and

that, the complainant, Acie J. Belton, is a citizen of the United States of America and a citizen and resident of lawful age of the Parish of East Baton Rouge, State of Louisiana, and is a duly qualified candidate for the Democratic Nomination to the office of School Board Member of East Baton Rouge Parish School Board, State of Louisiana, for the four (4) year term from Ward Two (2) of East Baton Rouge Parish, State of Louisiana, in the Democratic Primary Election to be held in the Parish of East Baton Rouge, State of Louisiana, on Saturday, July 28, 1962.

b) That complainants are members of the Negro race bringing this action on their own behalf and on behalf of all other Negroes similarly situated with respect to the matter here involved, they being so numerous as to make it impractical to bring them all before the Court and there being common questions of law and fact. A common relief being sought, complainants present this action as a class action pursuant to Rule 23(a) of the Federal Rules of Civil Procedure. Complainants adequately represent the interests of the class.

[fol. 4] c) That Wade O. Martin, Jr. is a citizen of the United States of America and is the duly elected Secretary of State of the State of Louisiana, and who, by the provisions and terms of said Act, is expressly charged with the enforcement of same.

d) This is a proceeding pursuant to Title 28, United States Code, Sections 2201 and 2202 for a Declaratory Judgment, declaring the rights and other legal relations of claimants and other Negroes similarly situated in the subject matter in controversy between the parties, to-wit:

Whether Act Number 538 of the 1960 Regular Session of the Louisiana Legislature violates the rights, privileges and immunities of complainants, and other Negroes similarly situated, as guaranteed by the First, Fourteenth and Fifteenth Amendments to the Constitution of the United States and secured by Title 42, United States Code, Sections 1971(a) and 1981 to seek and obtain public offices free from state imposed

5

racial distinctions and discriminations and to vote free from abridgements, denials and distinctions imposed by the State?

e) Complainants allege and aver that the operation and enforcement and the continued operation and enforcement of said Act Number 538, invades, denies, and abridges their rights, privileges and immunities as guaranteed by the First, Fourteenth and Fifteenth Amendments to the Constitution of the United States and secured by Title 42, United States Code, Sections 1971(a) and 1981 in that said Act by its purpose and effect imposes a disability and burden in the exercise of their rights and privileges to seek and obtain public offices based solely on race; that said Act by its purpose and effect places the power and prestige of the State behind distinctions based solely on race and that said Act by its purpose and effect abridges the right to vote of complainants and their supporters.

f) Complainants allege and aver that by virtue of the operation and/or enforcement of Act Number 538 of the 1960 Regular Session of the Louisiana Legislature complainants will suffer immediate and irreparable harm, injury, loss and damage, unless this Court enjoin and restrain the defendant, Secretary of State of the State of Louisiana, his subordinates, agents and/or employees and his successors and assigns from enforcing said Act Number 538, which requires that every application, notification or declaration of candidacy, and every certificate of nomination and nomination paper pertaining to complainants specify their race; and complainants, on information and belief, further allege that on the ballots to be used in the election to be held on Saturday, July 28, 1962, complainants' race, which is the Negro race, will be printed within parentheses beside complainants' names.

Wherefore, complainants pray

1) That defendant, Wade O. Martin, Jr., be duly served and cited in the manner prescribed by law.

2) That a notice of a hearing of this matter be served on the proper State officers as provided by Title 28, United States Code, Section 2284(2).

3) That the Court convene a Three-Judge Court as provided by Title 28, United States Code, Section 2284.

4) That the Court advance the complaint on the Docket and order a Speedy hearing thereof according to law and upon such hearing the Court enter a Preliminary and Permanent Injunction to enjoin and restrain the defendant, Wade O. Martin, Jr., Secretary of State of the State of Louisiana, his subordinates, agents and/or employees and his successors and assigns from enforcing Act Number 538 of the 1960 Regular Session of the Louisiana Legislature on the grounds that said Act is unconstitutional, null, void, invalid and without legal force and effect in that said Act is in violation of the First, Fourteenth and Fifteenth Amendments to the Constitution of the United States and Title 42, United States Code, Sections 1971(a) and 1981.

5) That the Court adjudge, decree and declare the right and legal relations of the parties to the subject matter hereof to be in controversy and that such declaration shall have the force and effect of a final judgment or decree and that the Court adjudge, decree and declare that Act Number 538 of the 1960 Regular Session of the Louisiana Legislature is unconstitutional, null and void and invalid as in violation of the First, Fourteenth and Fifteenth Amendments to the United States Constitution.

6) That a Temporary Restraining Order issue herein prohibiting and restricting the defendant, Secretary of State of the State of Louisiana, his subordinates, agents and/or employees and his successors and assigns from en- [fol. 6] forcing Act Number 538 of the 1960 Regular Session of Louisiana Legislature on the grounds that immediate and irreparable injury, loss or damage will result to complainants before notice hereof can be served and a hearing had hereon.

7) That the Court allow complainants their costs and that complainants have such other and further relief as may appear just and proper in the premises.

Attorneys for Complainants: Johnnie A. Jones,
Murphy W. Bell, Bruce A. Bell, 971 South 13th
Street, Baton Rouge, Louisiana; Leonard P.

7

Avery, Samuel Dickens, 8152 Scenic Highway,
Baton Rouge 7, Louisiana; Wilmon L. Richardson,
1091 Swan Street, Baton Rouge 7, Louisiana;
By: Johnnie A. Jones.

Of Counsel: Jack Greenberg, James M. Nabrit, III,
Michael Meltsner, 10 Columbus Circle, New York 19, New
York.

[fol. 7] State of Louisiana
Parish of East Baton Rouge

. AFFIDAVIT OF ACIE J. BELTON

Before Me, the undersigned authority, this day personally came and appeared: Acie J. Belton, who, after being first duly sworn, did depose and say:

That he is one of the complainants in the above and foregoing complaint; that he is a citizen of the United States and of the State of Louisiana; and that he is a duly qualified candidate for the Democratic Nomination to the office of School Board Member of East Baton Rouge Parish School Board, State of Louisiana, for the four (4) year term from Ward Two (2) of East Baton Rouge Parish, State of Louisiana, in the Democratic Primary Election to be held on Saturday, July 28, 1962, in the Parish of East Baton Rouge, State of Louisiana; and that Dupuy H. Anderson, the other named complainant in the above and foregoing complaint, is a citizen of the United States and of the State of Louisiana, and that, he is a duly qualified candidate for the Democratic Nomination to the office of School Board Member of East Baton Rouge Parish School Board, State of Louisiana, for the four (4) year term from Ward One (1) of East Baton Rouge Parish, State of Louisiana, in the Democratic Primary Election to be held on Saturday, July 28, 1962, in the Parish of East Baton Rouge, State of Louisiana; that he has read the above and foregoing complaint and that all of the allegations of facts therein contained are true and correct to the best of his knowledge, information and belief; and that unless the

relief is granted as prayed for in the foregoing complaint the complainants named therein and the class they represent will suffer, on election day, come Saturday, July 28, 1962, immediate and irreparable harm, injury, loss and damage under and by virtue of the operation and/or enforcement of Act Number 538 of the 1960 Regular Session of Louisiana Legislature.

Acie J. Belton

Sworn To and Subscribed before me this 7th day of June, 1962.

Johnnie A. Jones, Notary Public.

[fol. 8] Certificate of Service (omitted in printing).

[fol. 9]

ATTACHMENT TO COMPLAINT

[Letterhead of State of Louisiana]

WADE O. MARTIN, JR.

I, the Undersigned Secretary of State, of the State of Louisiana, Do Hereby Certify That the annexed and attached three pages are true and correct photostat copies of Act No. 538 of the 1960 Regular Session of Louisiana Legislature, as shown by comparison with the original document on file in the archives of this office.

Given under my signature, authenticated with the impress of my Seal of office, at the City of Baton Rouge, this, 1st day of February A.D. 1961.

Wade O. Martin, Jr., Secretary of State.

[fol. 10]

House Bill No. 1061 By: Messrs. Garrett, DuPont, Stinson, Napper, Schoenberger, and Senators Gravolet, Patton, Jones, Carpenter, Adcock, and Long

AN ACT

To Amend Title 18 of the Louisiana Revised Statutes of 1950 by Adding Thereto a New Section to Be Designated as R.S. 18:1174.1, to Provide for the Designation of the Race of Each Candidate for Public Office, on Applications for, Notifications or Declarations of, Candidacy, and on Certificates of Nomination, Nomination Papers, Certifications of Names of Candidates Made to the Secretary of State, and on Ballots.

ORIGINATED

ACT 538

IN THE

HOUSE OF REPRESENTATIVES

[Signature Illegible], Clerk of the House of Representatives.

Received by Secretary of State this 14th day of July, 1960.

Wade O. Martin, Jr., Secretary of State.

Rec'd by the Governor—July 5, 1960 at 1:30 P.M.

D. Andries

[fol. 11]

House Bill No. 1061 By: Messrs. Garrett, DuPont, Stinson, Napper, Schoenberger, and Senators Gravolet, Patton, Jones, Carpenter, Adcock, and Long

AN ACT

To Amend Title 18 of the Louisiana Revised Statutes of 1950 by Adding Thereto a New Section to Be Designated as R.S. 18:1174.1, to Provide for the Designation of the Race of Each Candidate for Public Office on Applications for, Notifications or Declarations of, Candidacy, and on Certificates of Nomination, Nomination Papers, Certifications of Names of Candidates Made to the Secretary of State, and on Ballots.

Be It Enacted by the Legislature of Louisiana:

Section 1. Section 1174.1 of Title 18 of the Louisiana Revised Statutes of 1950 is hereby enacted to read as follows:

Section 1174.1. Designation of race of candidates on paper and ballots

A. Every application for or notification or declaration of candidacy, and every certificate of nomination and every nomination paper filed in any state or local primary, general or special election for any elective office in this state shall show for each candidate named therein, whether such candidate is of the Caucasian race, the Negro race or other specified race.

B. Chairman of party committees, party executive committees, presidents of boards of supervisors of election or any person or persons required by law to certify to the Secretary of State the names of candidates to be placed on the ballots shall cause to be shown in such certification whether each candidate named therein is of the Caucasian race, Negro race or other specified race, which information shall be obtained from the applications for or notifications

or declarations of candidacy or from the certificates of nomination or nomination papers, as the case may be.

C. On the ballots to be used in any state or local primary, general or special election the Secretary of State shall cause to be printed within parentheses () beside the name of each candidate, the race of the candidate, whether Caucasian, Negro, or other specified race, which information shall be obtained from the documents described in Sub-section A or B of this Section. The racial designation on the ballots shall be in print of the same size as the print in the names of the candidates on the ballots.

Section 2. All laws or parts of laws in conflict herewith are hereby repealed.

[Signature Illegible], Speaker of the House of Representatives.

[Signature Illegible], Lieutenant Governor and President of the Senate.

Jimmie H. Davis, Governor of the State of Louisiana.

Approved: July 9, 1960

[fol. 13] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA

BATON ROUGE DIVISION

Civil Action No. 2623

[Title omitted]

MOTION FOR TEMPORARY RESTRAINING ORDER
—Filed June 8, 1962, and Denial Thereof, June 11, 1962

The plaintiffs move this Honorable Court for the issuance of a Temporary Restraining Order, without notice, temporarily restraining the defendant, Wade O. Martin,

Jr., Secretary of State of the State of Louisiana, his subordinates, agents, servants and/or employees and his successors and assigns from enforcing the terms and provisions of Act Number 538 of the 1960 Regular Session of Louisiana Legislature, in the Primary Election to be held in East Baton Rouge Parish, State of Louisiana, on Saturday, July 28, 1962.

As appearers [sic] from the verified complaint, defendant will, unless restrained by order of this Court, cause immediate and irreparable injury, loss and damage to the plaintiffs, for which plaintiffs have no adequate remedy at law, before notice can be served and a hearing had thereon.

Attorneys for Plaintiffs: By: Johnnie A. Jones.

Motion for issuance of Temporary Restraining Order Denied—June 11, 1962—New Orleans, La.—E. Gordon West, U. S. District Judge.

[fol. 14]

IN UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA

BATON ROUGE DIVISION

Civil Action No. 2623

[Title omitted]

PROPOSED TEMPORARY RESTRAINING ORDER

Whereas, in the above-named cause it has been made to appear by the verified complaint filed herein, which was on this day of June, 1962, presented to the Honorable E. Gordon West, Judge of the United States District Court for the Eastern District of Louisiana, that a restraining order preliminary to hearing upon motion for a Preliminary Injunction should issue, without notice, because immediate and irreparable injury, loss and/or damage will result to the plaintiffs before notice can be served and a hearing had thereon, in that the plaintiffs are members of the Negro race and are duly qualified candidates for the Demo-

cratic Nomination to the offices of School Board Members of East Baton Rouge Parish School Board from Wards One (1) and Two (2) of East Baton Rouge Parish, State of Louisiana, in the Democratic Primary Election to be held on Saturday, July 28, 1962, and that, the operation and enforcement and the continued operation and enforcement of Act Number 538 of the 1960 Regular Session of Louisiana Legislature invades, denies and abridges plaintiffs' rights, privileges and immunities as guaranteed by the First, Fourteenth and Fifteenth Amendments to the Constitution of the United States and secured by Title 42, United States Code, Sections 1971a and 1981 in that the purpose and effect of said Act, thus, the enforcement of same, impose a disability and burden on plaintiffs in the exercise of their rights and privileges to seek and obtain public offices based solely on race; that said Act by its [fol. 15] purpose and effect, and finally, its enforcement, abridges the right to vote of plaintiffs and their supporters.

Notice and a hearing before entering a Temporary Restraining Order should not be required because the enforcement of said Act imposes a disability and burden on plaintiffs in the exercise of their rights and privileges to seek and obtain public offices based solely on race; that said Act places the power and prestige of the State behind distinctions based solely on race and that the enforcement of said Act abridges the right to vote of plaintiffs and their supporters.

Now Therefore, on motion of the plaintiffs

It Is Ordered that the defendant, Wade O. Martin, Jr., Secretary of State of the State of Louisiana, his subordinates, agents, servants and/or employees, and his successors and assigns, who receive actual notice of this order by personal service or otherwise, be, and they are hereby enjoined from enforcing Act Number 538 of the 1960 Regular Session of the Louisiana Legislature and all regulations thereunder until a full hearing and determination of the subject matter is had by the full Court of Three Judges.

This Temporary Restraint is on the condition that a bond be filed by the complainants herein in the sum of (\$) Dollars, conditioned that complainants will pay to the parties enjoined such damages as they may sustain by reason of said Temporary Restraining, if the Court finally decides that plaintiffs were not entitled thereto.

Issued at Baton Rouge, Louisiana, this day of June, 1962, at the hour of o'clock M.

..... District Judge.

[fol: 16]

IN UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA

BATON ROUGE DIVISION

Civil Action No. 2623

[Title omitted]

NOTICE OF MOTION FOR PRELIMINARY INJUNCTION

To: The Honorable Wade O. Martin, Jr., Secretary of State of the State of Louisiana

Please take notice that the undersigned will bring the attached Motion for a Preliminary Injunction on for hearing before the United States District Court (Baton Rouge Division) for the Eastern District of Louisiana, United States Courthouse, Baton Rouge, Louisiana, at o'clock A. M. on the day of, 1962, or as soon thereafter as counsel can be heard.

Attorneys for Complainants: By: Johnnie A. Jones.

[fol. 17]

IN UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA

BATON ROUGE DIVISION

West, J.:

Division "C"

No. 2623

Civil Action—BRD

[Title omitted]

MINUTE ENTRY OF ORDER DENYING MOTION FOR ISSUANCE OF
TEMPORARY RESTRAINING ORDER—June 11, 1962

It Is Ordered by the Court that the motion of Petitioners
for issuance of temporary restraining order be, and the
same is hereby, Denied.

EGW

Johnnie A. Jones, Esq.,
Wade O. Martin, Jr., Esq.,
Jack P. F. Gremillion, Esq.,

6/11/62—Copies Mailed—NBJ.

[fol. 18]

IN UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA

BATON ROUGE DIVISION

June 13, 1962

Honorable Richard P. Rives
United States Court of Appeals
Fifth Circuit
Post Office Box 1070
Montgomery 2, Alabama

In Re: Dupuy H. Anderson and Acie J. Belton, Com-
plainants v. Wade O. Martin, Jr., Defendant
Civil Action No. 2623, United States District
Court
Eastern District of Louisiana, Baton Rouge
Division

Dear Judge Rives:

In connection with our telephone conversation of yesterday, I am enclosing herewith a complete copy of the complaint filed in the above captioned matter.

Complainants have prayed for the convening of a three judge court to consider this matter. Since, to my knowledge, this precise question has not heretofore been passed upon, it is my considered opinion that this complaint presents a substantial constitutional question.

I would, therefore, request that a three judge court be constituted to hear this matter.

Since I have refused to issue a temporary restraining order, I would respectfully suggest that the three judge court be appointed as soon as possible so that an early hearing date may be afforded complainants. By telephone you tentatively appointed Judge Wisdom and Judge

Ellis to serve with me, but I understand that these appointments are subject to your future confirmation.

With kindest personal regards, I remain,

Sincerely,

E. Gordon West, United States District Judge.

Encl.

[fol. 19]

[File endorsement omitted]

IN UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA

BATON ROUGE DIVISION

Civil Action No. 2623

[Title omitted]

ORDER DESIGNATING THREE-JUDGE COURT—June 14, 1962

Whereas Honorable Elbert P. Tuttle, Chief Judge of the United States Court of Appeals for the Fifth Circuit is outside of the Circuit and temporarily unable to perform his duties as Chief Judge; and whereas the undersigned is a Circuit Judge in active service, present in the Circuit, under 70 years of age, next in precedence, and able and qualified to act as Chief Judge pursuant to Title 28, United States Code, Section 45(d); and whereas, in my judgment, the public interest so requires; and

The Honorable E. Gordon West, United States District Judge for the Eastern District of Louisiana, to whom an application for injunction and other relief has been presented in the above-styled and numbered cause, having notified me that the action is one required by act of Congress to be heard and determined by a district court of three judges, I, Richard T. Rives, as Acting Chief Judge of the Fifth Circuit, hereby designate the Honorable John Minor Wisdom, United States Circuit Judge, and the Honorable Frank B. Ellis, United States District Judge for the East-

ern District of Louisiana, to serve with Judge West as members of, and with him to constitute the court to hear and determine the action.

Witness My Hand this 14th day of June, 1962.

Richard T. Rives, Acting Chief Judge.

(Injunctions—Three judge courts—designation,
28 U.S.C.A. Sec. 2284)

[fol: 20]

[File endorsement omitted]

IN UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA

BATON ROUGE DIVISION

Civil Action No. 2623

[Title omitted]

ORDER SETTING HEARING—Filed June 15, 1962

On application of complainants:

It Is Ordered that a hearing on the plaintiffs' motion for the issuance of a preliminary injunction shall be held before the three judge Court empanelled in this matter at the Post Office Building, New Orleans, Louisiana, at 10:00 o'clock a. m. June 26, 1962.

E. Gordon West, United States District Judge.

[fol. 21]

IN UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA

BATON ROUGE DIVISION

NOTARY PUBLIC

PHONE 2-8573

JOHNNIE A. JONES

ATTORNEY AT LAW

530 SOUTH 13TH STREET

BATON ROUGE 3, LOUISIANA

[Stamp—U. S. District Court—Eastern District of Louisiana—Filed—June 18, 1962—A. Dallam O'Brien, Jr., Clerk.]

June 18, 1962

Hon. C. H. Banta, Clerk
U. S. District Court
Eastern District of Louisiana
Baton Rouge Division
Baton Rouge, Louisiana

Re: Civil Action No. 2623

Dupuy H. Anderson, et al.

vs.

Wade O. Martin, Jr.

Dear Sir:

The plaintiffs in the captioned premises request that subpoenas issue to the following named witnesses to appear and testify in the hearing to be had in the captioned cause on Tuesday, June 26, 1962 at the hour of 10:00 o'clock A.M. in the Courthouse located in the Post Office Building at New Orleans, Louisiana. The names and addresses of the witnesses, to-wit:

1. Acie J. Belton
1763 Rosenwald Road
Baton Rouge 7, Louisiana

2. Hon. Wade O. Martin, Jr.
Secretary of State of the State of Louisiana
State Capitol Building
Baton Rouge, Louisiana
3. Hon. Jodie Smith
Registrar of Voters
East Baton Rouge Parish
Parish Courthouse Building
Baton Rouge, Louisiana

[fol. 22]

4. Russell J. Diron, Chairman
East Baton Rouge Parish Democratic Committee
620 Florida Street
Baton Rouge, Louisiana

Thanking you for your very kind and prompt cooperation, I am

Yours very truly,

Johnnie A. Jones

JAJ/mlj

[fol. 23]

IN UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA

BATON ROUGE DIVISION

Civil Action No. 2623

Wisdom, J.:

West, J.:

Ellis, J.:

[Title omitted]

MINUTE ENTRY OF ARGUMENT AND SUBMISSION

—June 26, 1962

This cause came on for hearing this day on Hearing on Plaintiff's motion for issuance of a preliminary injunction.

**Present: Jack Greenberg, Esq.,
Johnnie A. Jones, Esq.,
Attorneys for Plaintiff**
**Harry Fuller, Esq.,
T. McFerrin, Esq.,
Attorneys for State of Louisiana**

All present and ready.

**Defendant files written motion to dismiss and response
to complaint.**

Argument.

Submitted.

[fol. 24]

**IN UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA**


BATON ROUGE DIVISION

CA 2623

[Title omitted]

**MINUTE ENTRY OF ORDER DENYING PRELIMINARY WRIT OF
INJUNCTION—June 26, 1962**

**The motion to dismiss for lack of jurisdiction and of
abatement is denied, whereupon, this cause came on to be
heard under special assignment and pursuant to stipulation
of counsel as to the evidentiary matters involved and the
Court having considered the law and the stipulation, and
the arguments of counsel,**



It Is Ordered, that plaintiff's request for a preliminary writ of injunction be denied.

E. Gordon West, District Judge.

Frank B. Ellis, District Judge.

United States Circuit Judge
Dissenting

John Minor Wisdom

6/26/62

cc: Gremillion
Martin
Jones
Fuller
McFerrin

[fol. 25]

[File endorsement omitted]

IN UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA

BATON ROUGE DIVISION

Civil Action No. 2623

[Title omitted]

MOTION TO DISMISS—Filed June 26, 1962

Now Into Court through undersigned counsel comes Wade O. Martin, Jr., appearing herein through Jack P. F. Gremillion, Attorney General of the State of Louisiana, and other undersigned counsel, and files this Motion to Dismiss on the following grounds, to-wit:

1. This Court does not have jurisdiction.

a) Plaintiffs allege jurisdiction under Title 28 U.S.C.A. 1331, in that the matter in controversy arises under the Constitution, laws or treaties of the United States and the amount in controversy exceeds Ten Thousand and no/100

(\$10,000.00) Dollars, exclusive of interest and costs. Respondent avers that plaintiffs' claim involves nothing in money value, and therefore this statute confers no jurisdiction of this Court. (St. Paul Mercury Indemnity Company vs. Red. Cab Company, 303 U. S. 283, 58 S. Ct. 586).

b) Complainants further invoke jurisdiction of this Court pursuant to Title 28, U.S.C.A., Section 1343(3) because of the provisions of Title 42, U.S.C.A., Sections 1971 (a) and 1981. 42 U.S.C.A. 1971(a) provides that all persons otherwise qualified by law shall be allowed to vote at any election without distinction of race, color or previous [fol. 26] servitude. This Section does not confer jurisdiction upon the Court in this instance because no person is being denied the right to vote because of color, race or previous servitude.

42 U.S.C.A. 1981 provides that all persons shall have equal rights under the law, and shall suffer equal penalties, pain, punishment and the like under the law. Act 538 of 1960 is expressly designed to apply to everyone equally, and therefore confers no jurisdiction upon this Court on the grounds of racial discrimination. Jurisdiction must be expressly pleaded in the complaint, and alleged deprivations of constitutional rights must be affirmatively stated and set forth, which is not done in the complaint filed in this matter. (South Covington and C. St. Railway Co. vs. City of Newport, 42 Sup. Ct. 418, 259 U. S. 97).

. 2. A Three Judge Court does not have jurisdiction to hear this cause. A sufficient Federal Constitutional question is necessary to invoke the jurisdiction of a Three Judge District Court, and the existence of this question must be determined by the allegations of the complaint. (Shuttlesworth vs. Birmingham Board of Education of Jefferson County, 162 Fed. Sup. 372, affirmed 79 Sup. Ct. 221; Webb vs. State University of New York, 120 Fed. Sup. 554). A sufficient Federal question does not exist merely by complainants' allegations in an action to enjoin enforcement of a state statute that a section of such a statute is unconstitutional. (Patterson vs. Hardon, 145 Fed. Sup. 299).

3. A Three Judge Court is without authority to issue an injunction as prayed for in this matter. When a Federal Court is asked to interfere with enforcement of state statutes, it should only do so to *prevent irrevocable injury which is clear, imminent and substantial*. (Piccoli vs. Board of Trustees and Warden of State Prison, 87 Fed. Sup. [fol. 27] 672). An injunction should not issue against a State officer clothed with the authority to enforce a law unless in a case reasonably free from doubt and when necessary to prevent *clear and irrevocable injury*. (Pearl Assurance Co., Limited of London, England vs. Harrington, 38 Fed. Sup. 411, affirmed 61 Sup. Ct. 1120).

4: Plea of Abatement

The pendency of a representative suit is grounds for the abatement of a subsequent similar suit in the same jurisdiction, although the second complainant is not a party to the prior suit. (Gamble vs. San Diego, 79 Fed. 487). Therefore this action should be abated due to the existence of a suit entitled Bruce A. Bell vs. Wade O. Martin, Jr., presently pending in the United States District Court for the Eastern District of Louisiana, Baton Rouge Division, Civil Action No. 2432 on the Docket, copies of which suit and defendant's answer thereto are annexed hereto and made part hereof.

5. The complaint fails to state a claim against defendant upon which relief can be granted.

Wherefore, mover prays that this complaint be dismissed at complainants' cost.

By Attorneys: Jack P. F. Gremillion, Attorney General, State of Louisiana; Carroll Buck, First Assistant Attorney General; Harry Fuller, Second Assistant Attorney General; Teddy W. Airhart, Jr., Assistant Attorney General; Thomas W. McFerrin, Special Counsel.

[fol. 28] Certificate of service (omitted in printing).

[fol. 29]

[File endorsement omitted]

IN UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA

BATON ROUGE DIVISION

Civil Action No. 2623.

[Title omitted]

RESPONSE—Filed July 2, 1962

Now Into Court, through Jack P. F. Gremillion and other undersigned counsel comes Wade O. Martin, Jr., Secretary of State, State of Louisiana, and files this his Response in the above captioned matter, reserving all rights in regard to his Motion previously filed herein, denying each and every allegation contained in the complaint except those hereinafter expressly admitted, and with respect shows that:

I.

Defendant denies the allegations contained in Article I of complainants' petition.

II.

Defendant denies the allegations contained in Article II of complainants' petition.

III.

Defendant denies the allegations contained in Article III of complainants' petition.

IV.

Particular Averments

a) Defendant admits the allegations contained in Article IV, Section A of the complaint.

[fol. 30] b) Defendant denies the allegations contained in Article IV, Section B of the complaint.

c) Defendant admits the allegations contained in Article IV, Section C of the complaint.

d) Defendant denies the allegations contained in Article IV, Section D of the complaint.

e) Defendant denies the allegations contained in Article IV, Section E of the complaint.

f) Defendant denies the allegations contained in Article IV, Section F of the complaint.

Wherefore, defendant prays that complaint be dismissed at complainants' cost.

By Attorneys: Jack P. F. Gremillion, Attorney General, State of Louisiana; Carroll Buck, First Assistant Attorney General; Harry Fuller, Second Assistant Attorney General; Teddy W. Airhart, Jr., Assistant Attorney General; Thomas W. McFerrin, Special Counsel.

[fol. 31] Certificate of service (omitted in printing).

[fol. 32] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA

BATON ROUGE DIVISION

Civil Action No. 2623

DUPUY H. ANDERSON and ACIE J. BELTON, Complainants,

vs.

WADE O. MARTIN, JR., Defendant.

Attorneys for Complainants:

Johnnie A. Jones, Murphy W. Bell, Bruce A. Bell, Leonard P. Avery, Samuel Dickens, Wilmon L. Richardson; Of Counsel: Jack Greenberg, James M. Nabrit, III, Michael Meltsner.

Attorneys for Defendant:

Jack P. F. Gremillion, Attorney General, State of Louisiana; Carroll Buck, First Assistant Attorney General; Harry Fuller, Second Assistant Attorney General; Teddy W. Airhart, Jr., Assistant Attorney General; Thomas W. McFerrin, Special Counsel.

OPINION—June 29, 1962

Before John Minor Wisdom, Circuit Judge, and E. Gordon West and Frank B. Ellis, District Judges

WEST, E. GORDON, J.

In 1960 the Louisiana Legislature enacted legislation requiring the Secretary of State to place a racial designation over the name of every candidate on the ballot in the primary or general election.¹ Under the statute the candidate [fol. 33] must place his name and racial designation on his

¹ La. R. S. §1174.1, Act 538 of 1960

“§1174.1 Designation of race of candidates on paper and ballots

A. Every application for or notification or declaration of candidacy, and every certificate of nomination and every nomination paper filed in any state or local primary, general or special election for any elective office in this state shall show for each candidate named therein whether such candidate is of the Caucasian race, the Negro race or other specified race.

B. Chairmen of party committees, party executive committees, presidents of boards of supervisors of election or any person or persons required by law to certify to the Secretary of State the names of candidates to be placed on the ballots shall cause to be shown in such certification whether each candidate named therein is of the Caucasian race, Negro race or other specified race, which information shall be obtained from the applications for or notifications or declarations of candidacy or from the certificates of nomination or nomination papers, as the case may be.

C. On the ballots to be used in any state or local primary, general or special election the Secretary of State shall cause to be printed within parentheses (), beside the name of each candidate, the race of the candidate, whether Caucasian, Negro, or other specified race, which information shall be obtained from the documents described in Sub-Section A or B of this Section. The racial designation on the ballots shall be in print of the same size as the print in the names of the candidates on the ballots.

certificate of candidacy and the Secretary of State uses that information in preparing the ballot. The designation applies to all candidates. The Statute requires that the designation of "Caucasian", "Negro", or "other specified race" be placed on the ballot after the name of each candidate.

Plaintiffs are two negro candidates for the school board in East Baton Rouge Parish, State of Louisiana. They challenge the constitutionality of this statute under the First, Fourteenth and Fifteenth Amendments to the United States Constitution and request injunctive relief against the Secretary of State prior to the July 28, 1962, Democratic primary.

The District Judge denied a temporary restraining order and thereafter a three-judge court was convened pursuant to 28 U. S. C. A., § 2284. Defendant filed his answer together with a motion to dismiss for lack of jurisdiction in court on the day of the hearing. The court recessed to consider its jurisdiction and having concluded that it had jurisdiction,² the court reconvened to hear the merits. The [fol. 34] parties stipulated that the facts were as stated in plaintiffs' complaint; the case proceeded to argument, and was submitted.

At the outset it is important to grasp the fundamental relationships of the parties. Plaintiffs are candidates for office and the rights they advance arise out of that status. Secondly, the statute in question is a state statute and applies to all. While it requires the negro to have his race disclosed on the ballot, it requires the same of the Caucasian, Mongolian, and so on. The garden variety discrimination between white and negro is not involved. Moreover, the state adopts no "sophisticated" method of discrimination that might give us pause.³ The sole question is whether the constitutional rights of a negro candidate are abridged when his race, like that of all other candidates, is disclosed on the ballot pursuant to state statute.

² Jurisdiction is properly invoked under 28 U. S. C. A. §§ 1331; 1343(3); and 42 U. S. C. A. §§ 1971a, 1981, 1983.

³ See *Lane v. Wilson*, 307 U. S. 268.

Precisely which constitutional rights plaintiffs advance is somewhat difficult to determine. Certainly the Fifteenth Amendment gives plaintiffs no comfort! While the Fourteenth Amendment apparently protects rights broader than those originally conceived by its drafters due to the Equal Protection and Due Process clauses,⁴ the Fifteenth Amendment is direct in its protection.⁵ It is exclusively the right to vote, and nothing more, which, in terms, is protected. Surely the statute must be interpreted in such a way as to protect the fundamental power of the franchise in whatever context a State bent on discrimination seeks to cast it.⁶ But at no time has the Supreme Court expanded the protection of the amendment beyond the franchise. Even with the recognition that the Fifteenth Amendment created affirmative rights,⁷ the court has not gone beyond the protection of the voter per se. Likewise, *MacDonald v. Key*,⁸ which is urged on us as controlling, recognized that the right to vote is not involved in a statute requiring racial designations on the ballot. Moreover the facts of the case do not suggest a restriction on voting rights. The unfathomable vagaries of the voter operate just as freely with this statute as without it. This statute merely contributes to a more informed electorate. In any event, plaintiffs do not validly assert a right under the Fifteenth Amendment.

There is a creeping tendency, when dealing with problems in the area of the First and Fourteenth Amendments,⁹

⁴ *Brown v. Board of Education*, 347 U. S. 483; *Bolling v. Sharp*, 347 U. S. 497.

⁵ U. S. Constitution Amend., XV.

Sec. 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or any State on account of race, color, or previous condition of servitude.

⁶ *Terry v. Adams*, 345 U. S. 461; *United States v. Classic*, 313 U. S. 299.

⁷ *Ex parte Yarborough*, 110 U. S. 651; *Guinn v. United States*, 238 U. S. 347.

⁸ 224 F. 2d 608 (10 Cir. 1955).

⁹ So that the matter may not confuse the issue let it be noted that the First Amendment is wholly inapplicable to this case

to outlaw State statutes on the grounds of their lack of rightness or wisdom, while under the misapprehension that only their constitutionality is being tested. This the Supreme Court has told us, more than once, we may not do.¹⁰ With due respect for our federalism, the court must examine the Constitution and the various lines of Supreme Court decisions and determine if the State action contravenes the Constitution. The examination must be liberal so as not to exalt form over substance; it must be circumspect so as to accord the states their just powers.¹¹ [fol. 36] Plaintiffs' reliance on the Fourteenth Amendment suggests two lines of Supreme Court cases which might control this action. The first of these is the right to anonymity defined in *N.A.A.C.P. v. Alabama*, 357 U. S. 449. This case, plus *Bates v. Little Rock*, 361 U. S. 516, and *Talley v. California*, 362 U. S. 60, expounded the proposition that a person exercising freedom of speech or association had a right to anonymity if disclosure entailed "the likelihood of a substantial restraint upon the exercise . . . of their right to freedom of association."¹² Justice Black in *Talley v. California*, supra at 65, explained that "the reason for these holdings was that identification and fear of reprisal might deter perfectly peaceful discussions of public matters of importance."

dealing as it does with the powers of Congress. It is the rights enumerated in the First Amendment which are included within the Fourteenth Amendment upon which plaintiff relies. *Gillow v. New York*; 268 U. S. 652.

¹⁰ *Carpenter's Union v. Ritter's Cafe*, 315 U. S. 722.

Giboney v. Empire Storage Co., 336 U. S. 490.

Teamsters Union v. Hanke, 339 U. S. 470; *Building Service Employees v. Gazzam*, 339 U. S. 532.

¹¹ "To maintain the balance of our federal system, insofar as it is committed to our care, demands at once zealous regard for the guarantees of the Bill of Rights and due recognition of the powers belonging to the states. Such an adjustment requires austere judgment, and a precise summary of the result may help to avoid misconstruction." *Milk Wagon Drivers v. Meadowmoor*, 312 U. S. 287, 297.

¹² *N.A.A.C.P. v. Alabama*, supra, at 462.

It may be assumed, for present purposes, that plaintiffs have a constitutional right to seek office.¹³ However, no matter what the length and breadth of that right, there is no basis for saying that a candidate for office has a right to anonymity. The Court in *N.A.A.C.P. v. Alabama*, was of the opinion that the injury to a right subsequent to disclosure of identity precludes the right to identification. A political candidate does not lose his right to run for office by disclosure of his race. Further, it is safe to say that his race, like his name and political affiliation which also appear on the ballot,¹⁴ will come out in the campaign. This court is not disposed to create a shield against the brightest light of public examination of candidates for public office.

The Court in *Bates, N.A.A.C.P. v. Alabama*, and *Talley*, recognized that the right to anonymity could be abridged [fol. 37] in certain instances. However, in those instances, the State bore the burden of showing an overriding interest in the public sufficient to justify the partial abridgement of the right.¹⁵ In the case before us the right of anonymity on the ballot does not exist so far as this court can determine. Thus this court is not put to any balancing since no personal interests are placed in the scale opposite the State interest, whatever it may be. We conclude that the Louisiana statute does not violate the Fourteenth Amendment on that score.

The second line of cases which appears applicable are the "state action" cases having their matrix in *Shelley v. Kraemer*, 334 U. S. 1, and *Barrows v. Jackson*, 346 U. S. 249. It is insufficient to state that these cases are distinguishable because state action is clear in this case. These cases must be read for their meaning as well as their facts.

The first case is, of course, *MacDonald v. Key*, supra. While it does not fall precisely within the "state action" concept, it is the case closest on its facts and involves the

¹³ See *MacDonald v. Key*, 10 Cir. 224 F.2d 608.

¹⁴ La. R. S. 18:671.

¹⁵ See also *Teamsters Union v. Hanke*, 339 U. S. 470, 474. *Teamsters Union v. Vogt, Inc.*, 354 U. S. 284.

equal protection clause. There the Tenth Circuit found that the requirement that only negroes have their race designated on the ballot violated the Fourteenth Amendment. Plaintiffs attempt to make more of this case than is in it. The Tenth Circuit did not require any intricate theory of constitutional deprivation to strike down the Oklahoma Statute. Negro candidates were treated different from all other candidates without good reason being shown. Given those facts the Court need not have gone further, and it did not. This is not the case before us. Here all candidates must state their race and have it printed on the ballot. Plaintiffs must look further to find unconstitutionality.

Plaintiffs would have us find in *Shelly v. Kraemer* and its progeny some principle which would deter a state from placing racial classifications on the ballot. A brief synopsis [fol. 38] of the principle of these cases is in order. The Supreme Court, in the first instance, recognized that discrimination by private individuals was beyond the scope of the Fourteenth Amendment under the *Civil Rights Cases*.¹⁶ To this was added the undeniable proposition that discrimination by the states was improper under the Fourteenth Amendment. Further the Court held that ostensibly private discrimination which was in fact enforced by the state was discriminatory "state action" under the Fourteenth Amendment.¹⁷ The crucial fact in all these cases, insofar as the instant case is concerned, is that there existed a prior act of actually proven discrimination to which the state was privy. Either the private individual was seeking to exclude negroes from a neighborhood,¹⁸ or denying negroes the right to vote,¹⁹ or segregating buses,²⁰

¹⁶ 109 U. S. 3. See *Shelly v. Kraemer*, 334 U. S. 1, 13.

¹⁷ *Shelly v. Kraemer*, supra; *Barrows v. Jackson*, 346 U. S. 249; *Terry v. Adams*, 345 U. S. 461; *Burton v. Wilmington Parking Authority*, 365 U. S. 715.

¹⁸ *Shelly v. Kraemer*, supra; *Barrows v. Jackson*, supra.

¹⁹ *Terry v. Adams*, supra.

²⁰ *Boman v. Birmingham Transit Company*, 5 Cir. 280 F. 2d 531.

train terminals,²¹ restaurants,²² or golf courses.²³ In those cases the state sought either to enforce the discrimination²⁴ or permit it within the public domain.²⁵ Since the Louisiana statute does not discriminate on its face, the Court must ask where the proven discrimination lies. Plaintiffs offer no proof of actual discrimination against them.²⁶ They ask [fol. 39] the court to take notice that discrimination among the electorate will somehow occur as a result of this statute.²⁷ Precisely how this discrimination against plaintiffs can be discovered is not made clear, much less how the state controls the discrimination through this statute. Nothing that we can find in the state action cases suggests that a court may take a state statute, and gaze into the future, seeking some gossamer possibility of discrimination in a group of individuals wholly beyond the control of the state. The discrimination must be real and the state must effect it. On this record we find a nondiscriminatory statute and nothing more. Judicial notice of a state policy of segregation avails us nothing unless actual discrimination is proven as a result of that policy through the medium of

²¹ *Baldwin v. Morgan*, 5 Cir. 287 F. 2d 750.

²² *Burton v. Wilmington Parking Authority*, *supra*.

²³ *Hampton v. City of Jacksonville*, 5 Cir. No. 19298 May 17, 1962.

²⁴ *Shelly v. Kraemer*, *supra*; *Boman v. Birmingham Transit Co.*, *supra*.

²⁵ *Barton v. Wilmington Parking Authority*, *supra*.

²⁶ A classification in a statute having some reasonable basis does not offend against the equal protection clause of the Constitution even though in practice it results in some inequality. One who assails the classification in such a law must carry the burden of showing that it does not rest upon any reasonable basis, but is essentially arbitrary. *Morey v. Doud*, 354 U. S. 457.

²⁷ Plaintiffs' reliance on *Hall v. St. Helena Parish School Board*, E. D. La. 197 F. Supp. 649, is unavailing since in that case the court was able to determine purpose from concrete results, or at the very least easily predictable consequences. Plaintiffs do not refer this court to any resulting discrimination and do not even hint at predictable results.

this statute. We have previously found that the state treats all candidates alike.

For the foregoing reasons we conclude that the statute is not in violation of the Fourteenth Amendment, and the request for preliminary injunction is denied.

E. Gordon West, United States District Judge.
Frank B. Ellis, United States District Judge.

June 29, 1962

[fol. 40] Before Wisdom, Circuit Judge, and West and Ellis, District Judges.

WISDOM, Circuit Judge, dissenting:

In the eyes of the Constitution, a man is a man. He is not a white man. He is not an Indian. He is not a negro.

If private persons identify a candidate for public office as a negro, they have a right to do so. But it is no part of the business of the State to put a racial stamp on the ballot. It is too close to a religious stamp. It has no reasonable relation to the electoral processes.

When courts have struck down statutes and ordinances requiring separate seating arrangements in buses, separate restrooms, and separate restaurants in state-owned or operated airports and bus terminals, it was not because the evidence showed that negroes were restricted to uncomfortable seats in buses, dirty restrooms, and poor food. It was because they sat in buses behind a sign marked "colored", entered restrooms under the sign "colored", and could be served food only in restaurants for "colored". It is the stamp of classification by race that makes the classification invidious.

On principle, the case before us cannot be distinguished from *McDonald v. Key*, 10 Cir., 1955, 224 F.2d 608, *cert. den'd*, 350 U. S. 895. In that case the court passed on an Oklahoma statute requiring that any "candidate who is other than of the white race, shall have his race designated upon the ballots in parenthesis after his name." Under the Oklahoma constitution, the phrase "white race" includes

not only members of that race, but members of all other races except the negro race. The court held that this resulted in a denial of equality of treatment with respect to negroes who run for office. As a practical matter, in Oklahoma, the omission of any racial designation on the ballot amounted to the candidate identifying himself as a white man just as surely as a negro candidate would identify himself by the word "negro" after his name. The result was essentially the same result intended to be accomplished by the Louisiana statute. Act 538 of 1960 is somewhat more sophisticated in that there is superficial appearance of equality of treatment. The effect is the same in that candidates are classified by race, and the State is using the elective processes to furnish information and stimulus for racial discrimination in the voting booth.

The State's imprimatur on racial distinctions on the ballot is no more valid than the State's imprimatur on separate voting booths. In *Anderson v. Courson*, 1962, 203 F. Supp. 806 the District Court for the Middle District of Georgia held that maintenance of racially segregated voting places deprived negroes of equal protection of the law "in the matter of the exercise of the elective franchise, a function and prerogative of utmost importance in the process of government, and so intrinsically characteristic of the dignity of citizenship". (Judge Bootle, 203 F. Supp. at 811.)

Considering the extent of media of information today, it is highly unlikely that any voters will be confused by lack of racial identification of candidates on the ballot. Considering the number of parishes having a large negro population, it is entirely likely that a racial stamp will help as much as it will hinder negro candidates for public office in Louisiana. The vice in the law is not dependent on injury to negroes. The vice in the law is the State's placing its power and prestige behind a policy of racial classification inconsistent with the elective processes. Justice Harlan put his finger on it many years ago when he said that the "Constitution is color-blind". If there is one area above all others where the Constitution is color-blind, it is

the area of state action with respect to the ballot and the voting booth.

I respectfully dissent.

[fol. 43]

[File endorsement omitted]

IN UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA

BATON ROUGE DIVISION

Civil Action No. 2623

[Title omitted]

MOTION FOR LEAVE TO FILE AMENDED OR SUPPLEMENTAL
COMPLAINT—Filed September 19, 1962

Plaintiff moves this Court for leave to file the attached Amended or Supplemental Complaint on the ground that the transactions, occurrences, and events stated therein have happened since the date of plaintiff's original complaint and that it is in the interest of justice that all issues between plaintiff and defendant be litigated in this action.

Respectfully submitted,

Johnnie A. Jones, 530 South 13th Street, Baton Rouge 2, Louisiana; Jack Greenberg, James M. Nabrit, III, Michael Meltsner, Norman Amaker, 10 Columbus Circle, Suite 1790, New York 19, New York, Attorneys for Complainants.

[fol. 44]

IN UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA

BATON ROUGE, DIVISION

Civil Action No. 2623

[Title omitted].

PROPOSED AMENDED OR SUPPLEMENTAL COMPLAINT

I

Jurisdiction

The jurisdiction of this Court has been invoked and is further invoked pursuant to Title 28, United States Code, Section 1343(3) in that: this action is authorized by Title 42, United States Code, Section 1983, to be commenced by any citizen of the United States or other person within the jurisdiction thereof to redress the deprivation under color of state law, statute, ordinance, regulation, custom or usage of any right, privilege or immunity secured by the Fourteenth Amendment and the Fifteenth Amendment to the Constitution of the United States and secured by Title 42, United States Code, Section 1971(a) and 1981, providing that all citizens of the United States shall be entitled and [fol. 45] allowed to vote without distinction of race and for the equal rights of citizens and of all persons within the jurisdiction of the United States.

The jurisdiction of this Court has been invoked pursuant to Title 28, United States Code, Section 2281, this being an action for a permanent injunction restraining, upon the grounds of unconstitutionality, the enforcement of Act No. 538 of the 1960 Regular Session of the Louisiana Legislature, of which a duly certified photostat copy was appended, incorporated and made a part of complainants' original complaint.

II

Complainants bring this action as a class action pursuant to Rule 23(a)(3) of the Federal Rules of Civil Proce-

dures on their own behalf and on the behalf of all other Negroes similarly situated with respect to the matter here involved. This class is so numerous as to make it impracticable to bring them all before the Court but there are common questions of law and fact, a common relief is sought, and complainants adequately represent the interests of the class.

III

This is a proceeding pursuant to Title 28, United States Code, Sections 2201 and 2202 for a declaratory judgment, declaring the rights and other legal relations of complainants and other Negroes similarly situated in the subject matter in controversy between the parties, to wit:

Whether Act No. 538 of the 1960 Regular Session of the Louisiana Legislature violates the rights, privileges and immunities of complainants and other Negroes similarly situated, as guaranteed by the Fourteenth and Fifteenth Amendments to the Constitution of the United States and [fol. 46] secured by Title 42, United States Code, Sections 1971(a) and 1981 to seek and obtain public offices free from state imposed racial distinctions and discrimination and to vote free from abridgements, denials and distinctions imposed by the State?

IV

The original verified complaint in this action was filed on June 8, 1962. Complainants Dupuy H. Anderson and Acie J. Belton were then and are now citizens of the United States and residents of lawful age of the Parish of East Baton Rouge, State of Louisiana. Complainants on that date were duly qualified candidates for the democratic nomination to the office of school board member of East Baton Rouge Parish, Louisiana School Board, State of Louisiana, for the four year term. Complainant Anderson was a candidate from Ward One of East Baton Rouge Parish and complainant Belton was a candidate from Ward Two of East Baton Rouge Parish.

V

The original verified complaint averred that the defendant Wade O. Martin, Jr., is a citizen of the United States and is the duly elected Secretary of State of Louisiana who, by the terms of Act No. 538 of the 1960 Regular Session of the Louisiana Legislature, is expressly charged with enforcing the provisions of said Act. On information and belief complainants allege that the defendant is presently the Secretary of State of the State of Louisiana and is currently charged with enforcing the provisions of the above-named Act.

VI

Complainants in the original verified complaint alleged that the operation and enforcement of said Act, No. 538, [fol. 47] invades, denies and abridges their rights, privileges and immunities as guaranteed by the Fourteenth and Fifteenth Amendments to the Constitution of the United States and as secured by Title 42, United States Code, Sections 1971(a) and 1981 in that said Act by its purpose and effect imposes a disability and burden on the exercise of their rights and privileges to seek and obtain public office based solely on race; and that, further, said Act by its purpose and effect places the power and prestige of the State of Louisiana behind distinctions based solely on race and that said Act by its purpose and effect abridges the right to vote of complainants and their supporters. Complainants in the original verified complaint filed in this cause prayed the issuance of a preliminary and permanent injunction restraining the operation and enforcement of said Act No. 538.

VII

Complainants further allege that on June 11, 1962 their motion for a temporary restraining order on the grounds of immediate and irreparable injury was denied by order of this Court. Complainants also allege that their motion for preliminary injunction on similar grounds was denied on June 26, by order of this Court.

VIII

The primary election in which complainants were candidates was held in the Parish of East Baton Rouge on July 28, 1962. Complainants allege that the provisions of Act No. 538 were in full force and effect at that time. Complainants allege on information and belief that every application, identification or declaration of candidacy and every certificate of nomination and all nomination papers pertaining to them specified their race and that the ballots [fol. 48] used in said primary election specified their race by notation in parenthesis succeeding their names. In the democratic primary election held in the Parish of East Baton Rouge on July 28, 1962, complainant Anderson was defeated. Complainant Belton was defeated in the runoff election held on September 1, 1962. Each complainant alleges that his unsuccessful candidacy was influenced substantially by the operation and enforcement of Act No. 538. Complainants further allege that the continued operation and enforcement of Act No. 538 invade, deny and abridge their rights, privileges and immunities as guaranteed by the Fourteenth and Fifteenth Amendments to the Constitution of the United States and as secured by Title 24, United States Code, Sections 1971(a) and 1981 in that said Act by its purpose and effect imposes a disability and burden on complainants in the exercise of their right and privilege to seek and obtain public office not shared by other candidates for office; and that said Act by its purpose and effect places the power and prestige of the State behind distinctions based solely on race and that said Act by its purpose and effect abridges their right to vote and the right to vote of their supporters and the members of the class they represent.

IX

Complainants allege that they intend to be candidates in the next duly constituted democratic primary election for nomination as members of the East Baton Rouge Parish School Board and further that they intend to seek other public office in the Parish of East Baton Rouge and in the

State of Louisiana in the future. Complainants allege that the continued operation and enforcement of Act No. 538 will violate their rights to equal protection of the laws and the due process of law guaranteed under the Fourteenth Amendment to the Constitution of the United States.

[fol. 49].

X

Complainants also allege that they are duly registered voters in East Baton Rouge Parish who fully intend to vote in all future elections held in the Parish of East Baton Rouge. Complainants aver that the continued operation and enforcement of Act No. 538 will have the effect of impairing the efficacy of their votes and therefore will deprive them of their right to vote as guaranteed under the Fifteenth Amendment to the Constitution of the United States.

Wherefore, complainants pray:

- 1) That the Court advance the complaint on the docket and order a speedy hearing thereof according to law and that upon such hearing the Court enter a permanent injunction to enjoin and restrain the defendant, his subordinates, agents, and employees from enforcing Act No. 538 of the 1961 Regular Session of the Louisiana Legislature on the grounds that said Act is unconstitutional, null, void, invalid, and without legal force and effect in that said Act is in violation of the Fourteenth and Fifteenth Amendments to the Constitution of the United States and Title 42, United States Code, Sections 1981, 1971(a).

- 2) The Court adjudge, decree and declare the right and legal relations of the parties to the subject matter here in controversy and that such declaration shall have the force and effect of a final judgment or decree and that the Court adjudge, decree and declare that Act No. 538 of the Regular Session of the Louisiana Legislature for 1960 is unconstitutional, void and invalid and in violation of the [fol. 50] Fourteenth and Fifteenth Amendments to the United States Constitution.

Respectfully submitted,

Johnnie A. Jones, 530 South 13th Street, Baton Rouge 2, Louisiana; Jack Greenberg, James M. Nabrit, III, Michael Meltsner, Norman Amaker, 10 Columbus Circle, Suite 1790, New York 19, New York, Attorneys for Complainants.

Certificate of Service

This is to certify that I have this day of September, 1962 served a copy of the foregoing Amended or Supplemental Complaint together with a Motion for Leave to File same and a proposed Order Granting Leave upon the Honorable Jack P. F. Gremillion, Attorney General of the State of Louisiana at the State Capitol, Baton Rouge, Louisiana, by United States mail postage prepaid.

Johnnie A. Jones, Attorney for Complainants.

[fol. 51]

[File endorsement omitted]

IN UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA

BATON ROUGE DIVISION

Civil Action No. 2623

[Title omitted]

PROPOSED ORDER GRANTING LEAVE TO FILE AMENDED OR
SUPPLEMENTAL COMPLAINT

This cause came on to be heard on plaintiff's motion for leave to file an amended or supplemental complaint herein, and the Court being fully advised,

It Is Ordered (1) that plaintiff be given leave to file a supplemental complaint; (2) that defendant answer or move with respect to the supplemental complaint within twenty days after the date of this order.

Date:, 1962

....., United States District Judge.

**DENIAL OF MOTION FOR LEAVE TO FILE AMENDED AND
SUPPLEMENTAL COMPLAINT—September 19, 1962**

Motion for leave to file Amended & Supplemental Complaint Denied. Further ordered that no service of the proposed amended complaint need be made.

Sept. 19, 1962

E. Gordon West, U. S. District Judge.

[fol. 52]

IN UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA

BATON ROUGE DIVISION

Civil Action No. 2623

[Title omitted]

To: Johnnie Jones, Esq., Jack P. F. Gremillion, Esq.

Attorneys for Parties:

In accordance with Rule 77(d) of the Federal Rules of Civil Procedure, you are hereby notified that the Court (Judge West) has on September 19, 1962 rendered an Order that the motion of plaintiff for leave to file amended and supplemental complaint is Denied and has further Ordered that no service of the proposed amended complaint need be made.

Very truly yours,

A. Dallam O'Brien, Jr., Clerk, By: Mary Ann Sanford, Deputy Clerk.

mas

[fol. 53]

IN UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA

BATON ROUGE DIVISION

Civil Action No. 2623

DUPUY H. ANDERSON

and

ACIE J. BELTON, Complainants,

v.

WADE O. MARTIN, JR., Defendant.

ORDER DENYING ISSUANCE OF PERMANENT INJUNCTION
—September 28, 1962

Plaintiffs' motion for leave to file amended or supplemental complaint has been denied.

The Court heretofore having fully heard the arguments of counsel and having fully considered the evidence including stipulations of counsel, rendered judgment on June 26, 1962 denying plaintiffs' request for a preliminary writ of injunction. Its opinion in support of that judgment was rendered on June 29, 1962 and is incorporated herein by reference. The Court being of the opinion that for the reasons stated in its opinion, plaintiffs are not entitled to the relief sought,

It Is Ordered that plaintiffs' prayer for the issuance of a permanent injunction be and the same is hereby denied.

Dated Sept. 28, 1962.

[fol. 54] E. Gordon West, United States District Judge.

Frank B. Ellis, United States District Judge.

John Minor Wisdom, United States Circuit Judge, Dissenting.

[fol. 55]

[File endorsement omitted]

IN UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA
BATON ROUGE DIVISION
Civil Action Number 2623

DUPUY ANDERSON and ACIE J. BELTON, Plaintiffs,

versus

WADE O. MARTIN, JR., Defendant.

Transcript of Stipulation—June 26, 1962

Transcript of Stipulation entered into in Open Court in the above entitled and numbered cause heard at the United States District Courthouse, New Orleans, Louisiana, on June 26, 1962 before the Honorable John Minor Wisdom, Judge, United States Court of Appeals, Fifth Circuit; the Honorable E. Gordon West, Judge, United States District Court; and the Honorable Frank B. Ellis, Judge, United States District Court, presiding.

APPEARANCES:

Jack Greenberg, Esq., and Johnnie A. Jones, Esq., Attorneys for Plaintiffs.

Harry Fuller, Esq., and Thomas McFerrin, Esq., Assistants Attorney General, State of Louisiana, Attorneys for Defendant.

(Argument on Motions Filed by Defendant.)

[fol. 56]

COLLOQUY BETWEEN COURT AND COUNSEL

Judge Wisdom: Mr. Greenberg, you may now proceed.
Mr. Greenberg: If you will give up about two minutes, your Honors, answer was just filed and apparently it admits

everything that we intended to prove. If we can check to see that we don't omit anything, it may not be necessary to put on any proof.

Judge Wisdom: I was just wondering if you could enter into stipulation here that would probably cover all of the facts and expedite this matter? We will give you a recess if you wish.

Mr. Greenberg: May we have five minutes?

Judge Wisdom: Will that be enough? We will take as long as you need.

Mr. Greenberg: About a five or ten minute recess.

Judge Wisdom: If you need more time, we will give you more time. Mr. McFerrin, what would you say?

Mr. McFerrin: That is fine.

[fol. 57] Judge Wisdom: We will be in recess for ten minutes. Court will be in recess for about ten minutes.

(Recess 10:25 A.M. to 10:35 A.M.)

Judge Wisdom: Do you have a stipulation Mr. Greenberg and Mr. McFerrin?

Mr. Greenberg: Yes, sir. I will read this, subject to Mr. McFerrin's agreement that I have stated it correctly. It is a four part stipulation.

1. The defendant in this case is a ministerial officer required to follow the statute, and that he causes the ballots to be printed in accordance with the provisions of the statute.

2. Johnnie Jones is a member of the Negro race and is a qualified candidate for the office of District Judge in East Baton Rouge.

3. Johnnie Jones is an attorney in the Bell case heretofore mentioned by the defendant.

4. Bell is an attorney of record in this case.

Those last two stipulations were requested by the defendant.

Did I state it right?

[fol. 58] Mr. McFerrin: We would like to add that he is an attorney in this case and in the Bell case.

Mr. Greenberg: That is correct.

Judge Wisdom: Do you have any further testimony? Do you have any further evidence that you want to put in?

Mr. Greenberg: I might merely point out to the Court that there was an answer filed admitting paragraphs 4-A and 4-C of the complaint. We consider that we have proved all of the material allegations, the remaining allegations of the complaint being procedural and jurisdictional in nature.

Mr. McFerrin: The stipulation is concurred in. We have admitted these two sections.

Judge Wisdom: You have nothing further?

Mr. Greenberg: If you would like to hear argument?

Judge Wisdom: We do expect to hear argument now, but we want to make sure that you have the record in such a shape that you are both satisfied with it.

[fol. 59] Mr. McFerrin: I will proceed, now, if your Honors so desire.

Judge Wisdom: Suppose we let Mr. Greenberg argue first and then you argue.

(Argument of Counsel.)

Reporter's Certificate

The undersigned in his capacity of Official Court Reporter for the United States District Court hereby certifies the foregoing four and one-fifth pages constitute the transcript of his official Stenograph record made by him in the above entitled and numbered cause, at the time and place first hereinabove stated.

Baton Rouge, Louisiana, October 5, 1962.

Felix L. Olivier, Official Court Reporter, United States District Court, Eastern District of Louisiana, Baton Rouge Division.

[fol. 60]

[File endorsement omitted]

IN UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA
BATON ROUGE DIVISION
Civil Action No. 2623

[Title omitted]

NOTICE OF APPEAL TO THE SUPREME COURT OF THE
UNITED STATES—Filed October 25, 1962

I. Notice is hereby given that Dupuy H. Anderson and Acie J. Belton, the plaintiffs above named, hereby appeal to the Supreme Court of the United States from the final order denying plaintiffs' prayer for the issuance of a permanent injunction entered in this cause on October 3, 1962.

This appeal is taken pursuant to 28 U.S.C. §1253.

II. The clerk will please prepare a transcript of the record in this cause for transmission to the Clerk of the Supreme Court of the United States, and include in said transcript the following:

1. The verified complaint.
2. Plaintiffs' motion for temporary restraining order.
3. Minute entry of June 11, 1962 denying the motion for temporary restraining order.
- [fol. 61] 4. Plaintiffs' motion for preliminary injunction.
5. Defendant's motion to dismiss for lack of jurisdiction and of abatement.
6. Defendant's answer.
7. Transcript of stipulation of plaintiffs and defendant of June 26, 1962.
8. Order denying plaintiffs' request for preliminary injunction.

9. Opinion of the court of June 29, 1962.
10. Dissenting opinion of Judge Wisdom.
11. Plaintiffs' motion for leave to file amended or supplemental complaint.
12. Plaintiffs' amended or supplemental complaint.
13. Order denying motion for leave to file amended or supplemental complaint.
14. Order denying plaintiffs' request for a permanent injunction.
15. This notice of appeal.

III. The following questions are presented by this appeal:

1. Whether Act No. 538 of the 1960 Regular Session of the Louisiana Legislature violates the equal protection and due process clauses of the Fourteenth Amendment to the Constitution of the United States.

2. Whether Act No. 538 of the 1960 Regular Session of the Louisiana Legislature violates the Fifteenth Amendment [fol. 62] to the Constitution of the United States.

Jack Greenberg, 10 Columbus Circle, Room 1790,
New York 19, N. Y., Attorney for Appellants.

[fol. 63] Proof of Service (omitted in printing).

[fol. 64] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 65]

SUPREME COURT OF THE UNITED STATES

No. 684—October Term, 1962

DUPUY H. ANDERSON, et al., Appellants,

vs.

WADE O. MARTIN, JR.

Appeal from the United States District Court for the
Eastern District of Louisiana.

ORDER NOTING PROBABLE JURISDICTION

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted and the case is placed on the summary calendar.

February 18, 1963